**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WP no 4645/01

With 4713/01

With 4714/01

WP. No. 4653/01 (S/S)

Dinesh Chandra Loni

Vs.

State of Uttaranchal and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 28.02.06

Initial of Judge

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 4653 of 2001 (SS)

Dinesh Chandra Loni s/o Shanker Dutt Lohani
IV Class employee, R.E.S. Division, Almora ..... Petitioner

Versus

1. State of Uttaranchal
2. Superintendent Engineer, Uttaranchal, Pauri
3. Executive Engineer, R.E.S. Division, Almora

..... Respondents

Writ Petition No. 4645 of 2001 (SS)

1. Prakash Chandra Joshi s/o L.D. Joshi
2. Pramod Kumar Pathak s/o Sri B.D. Pathak
3. Dhan Singh s/o Sri Deewan Singh ..... Petitioners

Versus

1. State of Uttaranchal
2. Superintendent Engineer, R.E.S. Uttaranchal, Pauri
3. Executive Engineer, Rural Engineering Service Almora

..... Respondents

Writ Petition No. 4713 of 2001 (SS)

Vijay Kumar Upreti s/o Sri U.D. Upreti
Class III Employee in Rural Engineering Service, Almora

..... Petitioner

versus

1. State of Uttaranchal
2. Superintendent Engineer, R.E.S. Pauri Garhwal
3. Executive Engineer, R.E.S. Almora .....Respondents

Writ Petition No. 4714 of 2001 (SS)

Vinod Kumar Joshi s/o Gauri Dutt Joshi ..... Petitioner

Versus

1. State of Uttaranchal
2. Superintendent Engineer, R.E.S. Uttaranchal
3. Executive Engineer, R.E.S. Almora ..... Respondents

Sri K.N. Joshi, Advocate for the petitioners
Standing Counsel for the respondents.

Dated: 28.2.2006

**Hon'ble Rajesh Tandon, J.**

Heard the learned counsel for the parties.

All the above writ petition have similar facts and are interconnected, hence they are taken up together for disposal.

By means of these writ petitions the petitioners have prayed for a writ of certiorari quashing the order dated 30.9.2001, passed by the Executive Engineer, Rural Engineering Service, Almora and further a writ mandamus directing the respondents to regularize the services of the petitioners.

Briefly stated the petitioners were initially appointed on the post of Class IV employees in the Rural Engineering Service. In the year 1990 the petitioners were not permitted to work. The petitioners have preferred writ petition No. 114 of 1996 before the Allahabad High Court, Lucknow Bench. The said writ petition was disposed of in terms of the order passed in writ petition No. 8148 of 1990, Haider Mahandi Rejvi vs. State of U.P. and others. The State Government has filed special leave application against the said order which was also dismissed by the Supreme Court. In compliance of the order of

the Court, the Director U.P. Rural Engineering Service, U.P. Lucknow issued circular letter to all its divisions that all the existing vacancies in Class III and Class IV shall be filled up by the work charged employees. Vide Government order dated 30.5.2000, State policy was declared for regularization of Class III and Class IV employees. The Executive Engineer, Rural Engineering Service, Almora constituted a committee for pay fixation of the petitioners and on the recommendation of the committee he passed the order for fixation of pay on 14.9.2001. The petitioners have submitted that the Executive Engineer, Rural Engineering Service, Almora vide order dated 30.9.2001 terminated the services of the petitioners without giving any opportunity of hearing. Hence, the writ petitions.

According to the petitioners cancellation of the order will amount to civil consequences and as such opportunity of hearing should have been afforded to the petitioners before the impugned order is passed.

For the purpose of regularization of daily wage workers State of U.P. has formed Rules called The Uttar Pradesh regularization of Daily Wages Appointment on Group 'C' Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 1998 (hereinafter called 'the said Rules'). Entitlement and procedure for regularization has been defined under Rule 4 of the said Rules, which reads as under:

***4. Regularisation of daily wages appointments on Group 'C' Posts-****(1) Any person who-*

*(i) was directly appointed on daily wage basis on Group 'C' posts in the Government service before June 29, 1991 and is continuing in service as*

*such on the dat eof commencement of these rules and*

*(ii)* **********

*(2)* **********

*(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of the Service Rules.*

*(4)* **********

*(5)* **********

*(6) The Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority.*

***5. Appointment:-****The appointing authority shall subject to the provisions of sub rule (2) of Rule 4, make appointments from the list prepared under sub Rule (6) of the said rule in the order in which their names stand in the list*

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A perusal of the said Rule shows that appointing authority shall constitute a Selection Committee for regularisation of daily wage appointments in Group 'C'. The Committee after completing the necessary formalities shall prepare a list of selected candidates in order of seniority and shall submit the same to the appointing authority, who shall give appointment to the candidates mentioned in such list.

Sub Rule (3) of Rule 4 of the said Rules authorise only the appointing authority to constitute selection committee. In the case of the petitioner, admittedly the Executive Engineer, P.W.D. Champawat, respondent no. 3 is the appointing

authority, who constituted Selection Committee. The Selection Committee after examining the record of the candidates, prepared a list on the basis of seniority and submitted the same to the appointing authority for appointment. The respondents have not disputed to process of selection and the appointing authority duly made thereafter appointment of the petitioners and other candidates. No illegality or irregularity has been alleged in the process of appointment. Thus the appointment of the petitioners were perfectly justified and was in accordance with rules.

The reason shown by the respondents for cancellation of the appointment is that the Government has no sufficient financial resource to keep the petitioners in employment.

On account of cancellation of regularization, the petitioners have suffered civil consequences, as held by the Apex Court in the case of State of Orissa vs. Dr. Binapani Dei and others AIR 1967SC 1269. The Apex Court has observed that the administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The observations of the Apex Court are quoted below:

*"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to*

*his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil constitutional. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."*

The cancellation order could not have been passed without affording opportunity of hearing to the petitioners as held by this Court in Writ petition No. 236 (SS) of 2002, Pooran Singh vs. State of Uttaranchal and others, relying upon the the Apex Court in Basudeo Tewari vs. Sido Kanhu University and others (1998) 8 S.C.C.194 and Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. Hon'ble Mr. Justice P.C. Verma has held as under:

*"It is not disputed that the cancellation orders has been passed without any notice or pay in lieu of notice as required in condition No. 2 of the regularisation orders contained in*

*annexure No. 1, therefore, cancellation orders have been passed without affording any opportunity of hearing to the petitioners. As the regularisation orders were passed in implementation of the Scheme contained in Govt. order dated 15.10.1997 after due selection and the petitioners were regularized against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dated 10.04.2000 is not acceptable.*

*  *  *  *  *  *

*On account of cancellation of regularization, the petitioners have suffered civil consequence, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary vs. Sido Kanhu University and others (1998) 8 S.C.C.194. In Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. the Apex ourt held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice."*

In the case Smt. Maneka Gandhi vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:

*"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the*

*authority which has the power to take punitive or damaging action.*

*"In England, the rule was thus expressed by Byles J in Cooper vs. wandsworth Board of Works: (1863)14 CB (NS) 180:*

*"The laws of God and man both man give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. Adam (says God), " where art thou? Hast thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."*

The judgment in the case of Menka Gandhi (supra) has been followed in the case of West Bengal Electricity Regulatory Commission vs. C.E.S.C. Ltd. JT 2002 (7) SC 578, relying upon the case of Mrs. Maneka Gandhi vs. Union of India & Another, 1978 (1) SCC 248 as under:

*"The right of audi alteram partem is a valuable right recognised even under the India Constitution. See Mrs. Menka Gandhi vs. Union of India and another, 1978 (1) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part or rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by courts."*

The Apex Court in the case D.K. Yadav vs J.M.A. Industries Ltd; (1993) 3 SCC 259 has further held as under:

*"It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first*

*being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country.... They include.... Rights capable of being enforced or redressed in a civil action.... In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held tht even an administration order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuaton was in violation of principle of natural justice.*

*In State of W.B.Vs. Anwar Ali Sarkar 1952 SCR 284 AIR 1952 SC 75 per majority, a seven Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven judges held that the substantive and procedural law and action taken under them will have to pass the test under Article 14. The test of reason*

*and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied form the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to seen that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."*

Admittedly the orders of cancellation have been passed without affording any opportunity of hearing to the petitioners.

A writ of certiorari is issued quashing the order dated 30.9.2001 passed by the Executive Engineer, Rural Engineering Service, Almora, so far as it relates to the petitioners only. The petitioners are reinstated with consequential service benefits.

Accordingly, writ petitions are allowed. No order as to costs.

**Rajesh Tandon, J.**

28.2.2006

*Dhyani